Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

F.A.F.O. No. 303 of 2001
(Old No. 1133 of 1992)

(1) Smt. Jamilan
(2) Mohammad Akhatar .....Claimants/Appellants.

Versus

(1) M/s Indian Oil Corporation of India Ltd.
(2) Satyapal Ranjan
(3) The Oriental Insurance Company
Ltd, Haldwani, District – Nainital

.....Opp.parties/Respondents.

.....

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been filed by the appellants under Section 110-D of the Motor Vehicle Act, 1939 against the award dated 24.04.1992 passed by Motor Accident Claims Tribunal, Nainital in Motor Accident Claim Case No. 206 of 1987, Smt. Jamilan and another versus M/s Indian Oil Corporation of India Ltd. and two others, where by the Tribunal has decreed the claim petition for Rs. 33,600/- against the amount claimed by the claimants as compensation worth Rs. 2,70,000/-. It was also held by the Tribunal that the amount of compensation be paid by the opposite party No. 3-The Oriental Insurance Company Ltd. Alongwith interest at the rate of 6% per annum from the date of application i.e. 04.08.1987.

The basis of the award is the statement of P.W. 3 appellant-claimant-Smt.Jamilan who stated that the deceased was her husband and he was a line-man under the employment of the U.P. Electricity Board. At the time of accident he was drawing total salary of Rs. 2,216/- per month.

Out of this, the deceased was used to spend Rs. 800/- per month towards his family and Rs. 400-500/- per month to meet the expenditure of petrol and maintenance of the Motor cycle used by him. Besides this, he used to spend Rs. 400-500/- per month for cigarette and beetles. According to the personal of P.W. 3 Smt. Jamilan –wife of the deceased, the personal expenditure of the deceased was Rs. 800-1000/- per month. While appreciating this statement, the Tribunal held that the deceased used to spend Rs. 800-1000/- per month for the maintenance and plying of the Motor cycle, cigarette and beetles and Rs. 600/- per month on his fooding and clothing. Accordingly, the deceased used to spend on his personal expenditure an amount of Rs. 1600/- per month out of his salary. Therefore, the appellant-Smt. Jamilan used to get only Rs. 600/- per month for the left period of his service of the deceased which was four years and eight months Rs. i.e. 56 months and multiplying Rs. 600/- by 56 monts Rs. 33,600/- has been awarded. We have appreciated the statement made by P.W. 3 Smt. Jamilan, the Tribunal has wrongly held the personal expenditure to be Rs. 1600/- per month as in view of the statement made by P.W. 3 the maximum personal expenditure of the deceased was Rs. 500/- per month towards the maintenance and petrol used in the Motor cycle and Rs. 500/- per month on his cigarette and beetles. Thus, maximum expenditure goes of Rs. 1,000/- per month. The appellant is the wife of the decease. She is a natural witness. She has stated fairly about the expenditure of the deceased. The Tribunal has not recorded any reason for disbelieving this statement. The Tribunal has calculated the personal expenditure ignoring the statement of appellant-the wife of the deceased. Therefore, we hold that the personal expenditure of the deceased was Rs. 1,000/- per month in view of the statement made by a natural witness, the appellant- wife of

the deceased. Thus, Rs. 1200/- per month was being paid to the wife for the expenditure of the family. Therefore, we modify the award made by the Motor Accident Claims Tribunal and hold that the claimants – appellants are entitled to be paid compensation at the rate of Rs. 1200/- per month for the remaining period of service left after the death of the deceased i.e. four years eight months. Rs. 1200/- per month multiplying with 56 months comes to Rs. 67, 200/-.

The Motor Accident Claims Tribunal decided the case in the year 1992 when the rate of interest was 12% per annum. In the relevant year the Apex Court has granted interest at the rate of 9% per annum. Therefore, in our opinion, the rate of interest paid by the Tribunal was also unreasonable. We fix the rate of interest to be paid to the appellants shall be 9% per annum from the date of application moved before the Motor Accident Claims Tribunal concerned i.e. 04.08.1987.

Accordingly, we allow the appeal and provide that the appellants-claimants shall get Rs. 67,200/-(Rupees sixty seven thousand two hundred) only as compensation from the respondents Nos. 1 & 3 alongwith interest at the rate of 9% (nine per cent) per annum from the date of application i.e. 04.08.1987 till the final payment is made. The amount already paid shall be adjusted. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

05.08.2004
P.Singh